

UST POLICY COMMISSION MEETING

MINUTES

January 30, 2002

Present: Theresa Foster, Ian Bingham, Roger Beal, Mike O'Hara, Mike Denby, Hal Gill, Myron Smith, Karen Holloway and Nancy Jamison.

Absent: Elijah Cardon

1. **Call to Order:** Meeting was called to order at 9:18 a.m.

2. **Administrative Issues:**

Approval of Minutes: Myron Smith moved that the October minutes be approved as received. The motion was seconded by Harold Gill. The motion was unanimously approved by the Commission. Myron Smith moved that the minutes from the two November meetings be approved as received. The motion was seconded by Harold Gill. The motion was unanimously approved by the Commission.

Clarification of Calls to the Public: Open Meeting Law statutes give guidance on how to handle calls to the public. Mike O'Hara, Chair will forward a copy of the Open Meeting Law to members of the UST Policy Commission.

The public sometimes brings up issues not on the agenda. It is not allowable for the commission to address these issues without notice. The public should be told that the issue will be put on the agenda for discussion at the next meeting. Members of the public may also bring issues forward to Commission for appropriate discussion.

Myron Smith requested that we ask the Attorney General's (AG) office to send someone well versed in the Open Meeting Law to attend the meeting for the purpose of helping members to have a better understanding of the law. Mike O'Hara's response is that this has already been considered and will contact the AG's office.

Taking of Minutes: It is the opinion of Mr. Beal that verbatim minutes inhibit good discussion of topics. He would like the discussion to be more open. The minutes are also very lengthy, therefore making it difficult to review them.

Members discussed the benefits of having the minutes verbatim or summarized. Although verbatim captures more accurately, summarization is prerogative and a recorder should be used to capture full content of the meeting.

In addition, it was noted that the Commission has not been in compliance in that the minutes have not been available to the public in a timely fashion. (The requirement is within three working days of the meeting.) There would be significant additional costs in order to have the court reporter transcribe the notes to meet this time deadline. Karen Holloway volunteered to take the commission minutes, summarizing discussions and capturing all motions, as required. It was suggested the Commission try this with ADEQ providing the means to tape all meetings.

Mike O'Hara requested that Al Johnson, UST Ombudsman, notify the court reporter that her services are no longer needed.

3. **2001 UST Policy Commission Annual Report:**

A copy of the draft annual report was sent out to members. To date, only one member has sent comments on the Draft Annual Report back to Al Johnson. Once additional comments are received, a final draft will go out to commission members before a vote is made on the report. Al will prepare redline/strikeout version for members.

Hal Gill's comments included some word changes to the report. He said much time has been spent on the Rules and Guidance document and the Commission needs to look at mandates and then prioritize them. He said that the Commission could do a better job on the mandates and needs to acknowledge in the report that the Commission will not be able to move forward on the mandates until sub-committees are set up to work on them.

Mike O'Hara went through items in the report and made comments on each of the topics. The following are comments made regarding our response to each mandate:

1. Overall issues - no concern was expressed.
2. Cost effectiveness of Corrective Actions - we haven't addressed it as a specific item but it has been covered through our work on rules, guidance documents, and policies.
3. Approve use of SAF monies - this mandate is broadly written so that the commission could review issues as needed. The Commission will look at this mandate indirectly, not directly. Completing the SAF rules presents a problem will require a direct review. If there is a perception that the SAF presents a problem, the commission will be ready to look at it. The Commission has been monitoring the SAF program and found that the program is in line with what other states are doing. The Commission may add these comments in the annual report.
4. Mandate is addressed in the report. We should describe what we did in the study and add recommendations from the study in the annual report.
5. Evaluation of dates by which Arizona should phase out insurance. The problem of phase-out appears to be solving itself. Phase-out should be put on a future agenda.
6. Are releases from new systems being tracked? Will these releases affect insurance decisions.

An electronic version of the report was requested by Theresa Foster so that changes could be made

electronically. Al Johnson will send out a current copy of the report to the Commission members. All comments should be submitted to Mr. Johnson by 5:00 p.m. next Wednesday, February 6, 2002.

4. **Proposed UST Legislation:**

\$50,000 for update of SAF Actuarial Study: The chair welcomed comments from members and public on any information regarding the proposed legislation funding coming for SAF monies for the Actuarial Study. The figure of \$50,000 was suggested for conducting a revision or update to the study. The Commission was unsure where the figure came from. Based on recommendation from last meeting it is strongly felt that updates should be made. It was suggested that the Commission prepare a letter to the Legislature. This suggestion will be placed as an agenda item at the next meeting, along with a vote to be recommended for consideration.

John Pearce commented on proposed UST legislation (that will have a number assigned to it today) regarding appropriating SAF money to update the Actuarial Study.

The Commission determined that they need to be aware of any UST legislation. The agenda for the February Commission meeting will include a discussion of proposed legislation.

Department of Weights and Measures proposed rule developments (re: Stage I and II Vapor recovery) and Senate Bill 1131. Stakeholder meetings have been held and there are more to come. Currently Stage I and II as approved by Weights and Measures are viable and will continue to be improved. Requirements will focus on new equipment. The rule is in the draft stage.

The Commission will not look at the rule unless there is a problem with the section that deals with gas stations, or the rule affects the UST program. Concerns should be sent to the ADEQ Director.

The Commission requested that a copy of relevant legislation be available at the next meeting for discussion.

BREAK at 10:32 a.m., and reconvened at 10:45 a.m.

• **Technical Subcommittee Updates:**

General update on UST Rule Guidance Document: No comments made on the Rule Guidance Document (Section 6-RBCA is not complete yet).

Discussion on submission of UST Rule to Governor's Regulatory Review Council (GRRC): Rule package will be submitted to GRRC by February 16, 2002. The rule needs to be reviewed and voted on by the Commission members before going to GRRC next week.

Discussion and update on Claims Review Unit and SAF backlogs: Ian Bingham, commission member, commented that the numbers need to go through the appropriate management chain before they are made available. They are available but will not be released until management has seen them. Although the numbers are public information there is no mandate to prepare them. Mike O'Hara asked if the numbers could be available in the next couple of days. Ian should have them available at that time.

The Commission determined a need to discuss the SAF claims backlog at the next commission meeting.

Discussion on MTBE policy/guidance: Comments on agency's legal authority to use water quality standards to close LUST sites, and will consider incorporating various concerns into the guidance document. If there is a reason to reopen a site ADEQ will do so, if necessary, to protect public health.

Not discussed - UST Guidance Document training:

Discussion on SAF Stakeholder meetings, regarding Arizona Administrative Code:

R18-12-607-.01: ADEQ will start work on the SAF rule shortly. Guidance Document detailed. ADEQ is setting aside SAF issues when reviewing UST Corrective Action guidance document. Stakeholders meetings will be held to discuss these issues. There are no meetings planned until completion of Guidance Document.

Patricia Nowack reported that the following stakeholder meetings have been/will be scheduled:

- February 27 - cost ceilings for environmental laboratories and drillers
- February 28 and March 7 - discussion of the newly revised SAF application form, and certification forms. May evaluate broadening the tasks
- Additional stakeholder meetings will be scheduled on other issues. ADEQ wishes to take proactive stand when writing the SAF rules and want the definitions established early in the process.
- Other cost ceiling meetings will be scheduled with consultants and contractors.

Discussion of Arizona Revised Statutes (ARS) §49-1054(c) and ARS §49-1005(d):

There has been confusion on how the process of the new policy is working. It would be helpful to talk with Department staff in advance on what the Commission wants in the way of information or data and in what format. There is a trade off between being too general or too specific in preparing our agenda. Being too specific would unduly limit the discussion. We have received no complaints from the public on this issue.

Patricia Nowack reported regarding MTBE that time frames for submitting applications do not apply to reopened sites. She has discussed §49-1054(c) in previous meeting on how they were implementing these changes. It was suggested that perhaps she needs to add a paragraph

to the denial letter so that recipients understand their options under 1054(c). The §49-1005(d) says basically to remove the need for cost effectiveness (should be in SAF review).

Service Station Drywell general permit developments: At the last stakeholder's meeting, issues arose regarding concerns with the document. Based on owner/operator concerns, a moratorium on issues was identified in the rule. More meetings with inclusion of comments on the report for pre-approval technologies for drywells will be held. (The cities or counties mandate the drywells, but the state regulates them, thus creating a problem).

Call to the Public: John Pearce urged owners/operators on the drywell process - the deadline for comments is on February 8, 2002. As mentioned earlier the bill will have a number assigned today. Mr. Pearce will write a letter regarding the bill to be sent to the Policy Commission members and discussed at the next meeting.

Hal Gill read aloud the bill (49-1005(d)) so that all present would know what the content is. This will be an item on agenda at the next meeting along with John Pearce's letter)

There will be a Weights and Measures (W&M) meeting tomorrow at 9:00 a.m. to review aspects of the W&M rule for Stage I and II Vapor Recovery.

A request was made by Dan Kelly for a list of the 2002 Policy Commission meeting dates. Al Johnson directed him to the ADEQ Website to acquire the list. Dan asked for several other items to be considered such as the commissions comments on proposed legislation as an agenda item at next meeting; Issue of public comments, and Administrative Issues/Minutes-need tape recorder or court reporter to capture all information; GRRC hearing on rules (cannot vote in 21 days-document will not be ready); definition of backlog (initial determination) and asks that issues regarding the Claims Review Unit be placed on the next meeting agenda. Specifics of agenda requests from Dan Kelly are listed below:

- UST CA Unit - it was reported that it is fully staffed, does staff meet all criteria as outlined in bill?
- How does ADEQ calculate interest-what is the written policy?
- Department is prioritizing its review of reimbursement claims. He wants the commission to review this policy.

Adjourn: The meeting was adjourned at 12:05 p.m.